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SUBJECT: VISA WAIVER PROGRAM AND AN ENLARGED EU

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Classified By: PRMOFF MARC J. MEZNAR. REASONS 1.4 (B) AND (D).

11. (C) Summary. The enlargement of the EU on May 1 raised the number of EU countries not included in the visa waiver program (VWP) from one to ten. New Member States harbor hopes that their EU accession can become a way to wrest from the U.S. via the EU what they could not obtain bilaterally: inclusion in the VWP. Under existing rules of the Schengen Agreement, EU Member States which are not granted visa waiver by third countries can in theory invoke a "solidarity mechanism" requiring automatic visa reciprocity. The European Commission (EC) fears that votes might not be in place to override the solidarity mechanism if invoked by one of the new Member States, and is pressing the U.S. to expand VWP to include the new members. The EC argues that 2007 (when internal Schengen borders with the new members are expected to be dropped) will be the logical time for VWP expansion to occur. The EU warns that failure to address the grievances of the new Member States over visa rules -- or removing any current EU Member State from the VWP -- could lead to a reaction both side want to avoid. End Summary.

VWP: Impact of Enlargement

12. (SBU) The different treatment of Member States under the VWP has emerged as an especially nettlesome issue with the enlargement of the EU. Before enlargement, only one EU member state was not on VWP (Greece). After enlargement, that number rises to ten. At a time when increased scrutiny and tightening of the VWP is taking place in Washington, the EU has stepped up its lobbying campaign to expand the program to include all 25 EU Member States (reftel a). Expanding VWP is consistently at the top of the EU's agenda in all transatlantic migration dialogues, including the inaugural session of the Policy Dialogue on Borders, Transportation and Security (PDBTS) on 4/26 (reftel b), and increasingly is in the media as well.

13. (C) The EU is under pressure to be seen making the case for new Member States which already suffer from feelings of second-class status. Transitional provisions invoked by the 15 Member States -- including restricted access to labor markets for up to seven years (reftel c) and internal border checks until at least 2007 -- have created ill will between the old and the new members. The newcomers have also been forced to accept the Schengen Agreement's visa black list, which includes their immediate eastern neighbors with whom they have traditionally enjoyed strong commercial, cultural and political ties. In return for accepting the burdens of Schengen, the new members fully expect to reap the benefits -- which they see as including visa free travel to the U.S. (Comment: In some sense, the EU is trying to salve feelings they have created by foisting them onto the bilateral relationship. End Comment.)

14. (C) While EU officials have heard our views that adding to the current list of VWP grantees is unlikely, and some have privately acknowledge they are swimming against the tide in this regard, others have convinced themselves that their rationale is persuasive and that the U.S. may in due time expand the VWP list. Optimists in Brussels envision the following scenario for 2007, their target year for expanding VWP:

-- all EU Member States will be issuing biometric passports as a result of internal EU directives (with some going beyond the required ICAO and U.S. domestic standards by incorporating both fingerprints and digitized photographs);
-- the new Member States will have just passed a rigorous assessment of their border controls in order to accede to the benefits of the Schengen agreement as internal borders between old and new are removed. (The EC stresses that this assessment will be more than just a pro-forma, rubber-stamp because of all the hysteria in the Western Europe about waves of "benefit tourists" and other hordes of migrants long trumpeted by the media.);
-- the EU Border Agency, most likely to be based in either Warsaw or Prague, will be fully functioning and coordinating border security measures among the 25 Member States,

including policy, training and equipment purchases;
-- the upgraded lookout information system (SIS 2) will be providing instant access to all Member States, including biometrics-based data on malafide travelers and potential terrorists;
-- the Member States will also be tied together by the new Visa Information System where visa issuances can be instantly verified at ports of entry;
-- some old Member States will have opened up their labor markets to all new EU citizens; those Europeans eager to gain higher wages will have legal options nearby, reducing the attractiveness of the U.S. as a destination for clandestine laborers;
-- as happened before with Spain, Portugal and Ireland, the economic and social benefits of EU membership will be felt most strongly after enlargement. Labor migration will increasingly become cyclical; and
-- expatriates will increasingly move home with their nest eggs and stimulate domestic markets, many of which have already been growing faster than the EU norm.

Solidarity Mechanism: Potential Transatlantic Risk

15. (C) This is obviously a rosy scenario, especially regarding how quickly the economic benefits of EU membership would penetrate to the wider population in the new member states. Still, under current Schengen regulations, the EU could in theory be forced at any time by the new Member States to invoke a "solidarity mechanism" which might ultimately result in a visa requirement for all American citizens traveling to the 25 members of the Schengen Agreement. Under existing terms, any Member State which suffers from a lack of visa waiver reciprocity can (but is not required to) invoke the solidarity mechanism. An automatic visa requirement would begin after 30 days for citizens of that country traveling to all 25 Schengen members unless a qualified majority vote determined otherwise. For now, EC officials have been trying to discourage new Member States from triggering the solidarity mechanism, but they are worried about their ability to manage the process.

16. (C) During the PDBTS meeting, Justice and Home Affairs Director General Jonathan Faull stated, "We urge you to think again about ways to treat all EU countries the same way in the foreseeable future." He acknowledged Washington-based difficulties by noting that the expansion was not expected to take place immediately and that the EC would not expect all countries to be added simultaneously. Faull explained that the EU's own certification process on new member compliance with Schengen border standards will be done on a country-specific basis. This certification process, which must take place for new members to gain unhindered movement within the union, will begin in 2006. (Note. Although certification is done individually, for practical reasons it is likely that the eastern European countries will be brought in as a block. If not, a huge effort would have to be made on "temporary" external frontiers, such as the Polish-Slovak border, if one of these two countries were certified before the other and granted full Schengen privileges. End note.)

17. (C) Faull described the internal struggle to keep "the more worried, more excitable" new Member States from invoking the solidarity mechanism. "We have had to fight to keep the lid on this," he said. Regarding a potential visa requirement for Americans traveling to the Schengen area, Faull noted, "We don't want to do that" and added "we're not trying to frighten" the U.S. He also briefly mentioned the EC might attempt to modify the existing solidarity mechanism to make reciprocity less automatic.

18. (C) During separate consultations on 4/26 with CA DAS Janice Jacobs, DG JHA Head of Unit for Borders and Visas Jan de Ceuster sketched a few more details about current thinking to diffuse the potentially damaging nature of the solidarity mechanism vis-a-vis the transatlantic relationship. This would include eliminating the automatic visa imposition in order to give the EC more room to maneuver and negotiate with the third party. Another change would be taking the initiative from an aggrieved state to trigger the solidarity mechanism, and replacing it with an obligation for all states to notify the EC about any lack of reciprocity. Theoretically, this would relieve any aggrieved Member State from being labeled a spoiler or troublemaker. (Greece, for example, has chosen to ignore the lack of reciprocity with the U.S. and has not invoked the solidarity mechanism.)

19. (C) De Ceuster said that JHA Commissioner Vitorino was convinced that the agreement needed to be amended. However, whether this will be possible given the highly charged atmosphere remains to be seen. Already, some press reports characterize this rethinking of the Schengen agreement as "caving in" to the U.S.

10. (SBU) Jacobs outlined the procedure for adding any new

countries to the VWP, pointing out that the first criterion was B1/B2 visa refusal rates of three percent or less. In the post 9/11 world, EU interlocutors have a hard time remembering that socio-economic factors loom large in visa waiver in addition to homeland security concerns. Instead, they continue to pin high hopes on technological advances with passports and border controls.

Other Countries on the Radar Scope

11. (U) As of May 1, other developed countries have joined the US in treating EU Member States differently with regard to visas. Because the new Member States were obliged to adopt the visa white list as of May 1, their Schengen obligations forced them to drop visa requirements for Canada, New Zealand, Australia and other countries on the white list. These countries, by and large, have not reciprocated in full. Canada retains visa requirements on all ten except Malta, Cyprus and Slovenia. New Zealand's status is similar to Canada, although Hungary is also on their visa waiver list.

12. (U) Australia recently liberalized its travel regime for the new EU Member States by granting "electronic visa arrangements" (EVA) for the nine new members who do not enjoy the "electronic travel authority" in place with the other 16. Under the EVA, travelers submit visa requests and payments on line. They can either be granted a visa electronically and travel without any further bureaucratic impediment, or they are directed to a consulate for a personal interview.

13. (C) According to a Canadian immigration officer in Brussels, Canada fears that the new Member States might first invoke the solidarity mechanism against Canada rather than the U.S. The political ramifications would be fewer, as would potential consular workload increases and disruptions to tourist industries.

14. (C) On 5/6, New Zealand DCM told PRMOff that although New Zealand was not considering immediate changes to its visa waiver list, they had made a policy decision (which will not be advertised) to extend visa waiver to all 25 EU Member States in 2007 or as soon as the new Member States are fully certified to meet Schengen standards and the internal boundary between old and new is removed. Meanwhile, New Zealand plans to expand its work holiday program (similar to some of our J-1 visas), and it will also open an embassy in Warsaw. Officials hope these positive signals discourage any activation of the solidarity mechanism against New Zealand. Furthermore, the DCM noted that there are no significant Eastern European magnet communities in New Zealand (as is the case in the U.S., Canada and Australia) which largely fuel the demand for visa waiver.

Comment

15. (C) We doubt EU dissatisfaction over the VWP situation will escalate to the worst-case scenario (visas all the way around -- except the UK and Ireland) with regard to the U.S. European countries are not equipped to begin issuing visas to Americans any more than we are prepared to ramp back up visa issuance for VWP-eligible countries. The negative impact on U.S. tourism in Europe would also be a major disincentive. And peer pressure from other EU countries that benefit from VWP would prove a natural brake on those countries that might consider invoking the solidarity clause. The EC is most probably "buying time" with the new Member States on VWP by selling the rationale (described in paragraph 4) that positive changes will come in 2007.

16. (C) Still, the risks are there. At the Visa Working Group on May 12, Lithuania threatened to invoke the solidarity mechanism, and it reportedly took high level intervention from Commissioner Vitorino to dissuade them. Sensitivities of enlargement countries -- such as no access to western European labor markets and border checks remaining in place between old and new Member States -- give the EC very little room for maneuvering internally if one or more of the new members take up this issue with a vengeance. For this reason Commissioner Vitorino raised VWP during his consultations in Washington on May 12. The mention of VWP in the Department's press statement regarding his meeting with DepSec Armitage provoked a series of press inquiries, both to the Commission and to USEU, regarding the outcome of consultations on this issue. Whereas interest from the Poles, Czechs and Hungarians has long been heard in Brussels, new interest is being shown by the Baltics countries.

17. (C) The Washington dynamic and review process of current VWP Members could also precipitate a transatlantic clash over visas. While we doubt the EU would have the stomach to provoke a visa spat over the new members, a decision to

remove VWP privileges from one of the EU's older members would likely tip the balance within the Schengen group against the U.S. In the spirit of the newly created PDTBS, any possible changes in the visa regime should take place only after close consultations with the EC, the EU Member States and a well-coordinated public diplomacy campaign.

SCHNABEL